

EXHIBIT 1

SEP 29 2017

JENNIS D. GONZALEZ COUNTY CLERK STARR CO. TX
DEPUTY

CAUSE NO. PR-17-037

ESTATE OF

RAFAEL PENA DECEASED

DECEASED

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IN THE COUNTY COURT

COURT AT LAW

STARR COUNTY TEXAS

PLAINTIFF'S VERIFIED ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, ADELA RIVERA, As Administrator of the Estate of RAFAEL PENA, Plaintiff in the above styled and numbered cause, files this her PLAINTIFF'S ORIGINAL PETITION, and seeking to recover Estate property, and would respectfully show unto the Court as follows:

I.

PARTIES

Plaintiff is a resident of Starr County, Texas. She is bringing this lawsuit in her capacity as Administrator of the Estate of Rafael Pena.

Defendant, Mark A. Cantu, is a resident of Hidalgo County who may be served at 801 Nolana, Suite 340, McAllen, Texas.

Defendant, Roxanne Cantu, is a resident of Hidalgo County who may be served at 809 Sycamore Avenue, McAllen, Texas.

Defendant, Ayssa Cantu, is a resident of Hidalgo County who may be served at 6621 N. 5th Street, McAllen, Texas.

Defendant, Sandra Diaz, is a resident of Hidalgo County who may be served at 1205 N. 5th Street, McAllen, Texas.

Defendant Guerra & Moore, is a limited liability partnership, with its principal place

of business located in Hidalgo County, Texas, who may be served by serving its principals, Carlos Guerra, Michael Moore and/or David Lumber at their place of business, 4201 North McColl Road, McAllen, Texas 78504.

Plaintiff requests that citation be issued and that Defendant be served.

II.

JURISDICTION AND VENUE

This Court possesses jurisdiction because this matter is incident to the Estate of Rafael Pena. Plaintiff is seeking to recover property which she believes should be property of the Estate.

Venue is proper in Starr County, because the Estate is currently pending in Starr County.

III.

UNDERLYING FACTS

Decedent Rafael Pena transferred 809 Sycamore in McAllen, Texas, more fully described as Lot Nine (9), Block Four (4), Highland Park, an addition to the City of McAllen, Hidalgo County, Texas, as per plat map or plot thereof, recorded in Volume 10, Page 12, Map Records, Hidalgo County, Texas, to Defendants Mark A. Cantu and Roxanne Cantu. However, at the time of such transfer, Decent was suffering from dementia, and did not possess the legal capacity to transfer title. Decent Rafael Pena died on August 1, 2011 and the transfer to Mark Cantu and Roxanne Cantu was made one month before his death.

Defendants Mark A. Cantu and Roxanne Cantu subsequently transferred title to the property to Defendant Ayssa Cantu. In turn, Defendant Ayssa Cantu transferred the

property to Defendant Sandy Diaz.

Defendant Guerra & Moore claims a lien on the property; however, such lien does not arise from the conduct of Decedent.

Because Decedent Rafael Pena lacked legal capacity at the time of the transfer, Plaintiff/Administrator Adela Rivera seeks to have all the subsequent conveyances and any liens related thereto set aside, and made property of the Estate. Such property would then be administered and distributed pursuant to the terms of the intestate laws of State of Texas.

IV.

REQUESTED RELIEF

Plaintiff requests that all the transfers of Lot Nine (9), Block Four (4), Highland Park, an addition to the City of McAllen, Hidalgo County, Texas from Decedent Rafael Pena to Defendants Mark A. Cantu and Roxanne Cantu, along with all subsequent transfers and liens, be set aside, and title vested and transferred into Estate of Rafael Pena and administered by this Court.

Plaintiff further requests that the purported lien on the property claimed by Defendant Guerra & Moore be set aside, because of the lack of mental capacity of Rafael Pena when he initially transfer the property to Defendants Mark Cantu and Roxanne Cantu.

Additionally, Defendant Guerra & Moore has scheduled the property for sale on or about October 3, 2017 to satisfy its purported lien. Plaintiff requests a temporary restraining order, *ex parte*, to preclude such sale. Plaintiff/Administrator Adela Rivera possesses a probable right of recovery of said property, because Decedent, Rafael Pena lacked legal capacity at the time of the transfer (See Exhibit "1" Death Certificate). Should the

foreclosure sale go through, Plaintiff/Administrator Adela Rivera will suffer irreparable harm for which she lacks an adequate remedy at law because the property may be lost or sold and because each piece of property is unique. Furthermore, any possible damages which may not be recoverable as Defendant Guerra & Moore as an entity does not possess sufficient assets to satisfy any judgment because it is out of business, and longer a liable partnership. Insufficient time exists to permit Plaintiff/ Administrator Adela Rivera to seek a temporary injunction first, or to provide notice to Defendants. Pursuant thereto, Plaintiff is willing to post a bond as determined by this Court.

After notice and a hearing, Plaintiff/Administrator Adela Rivera requests that this Court convert the temporary restraining order into a temporary injunction.

Plaintiff/ Administrator Adela Rivera also requests all costs of court.

VI.

ADDITIONAL ALLEGATIONS

This is a Level 2 case.

All conditions precedent have been satisfied and/or excused.

WHEREFORE, PREMISES CONSIDERED, ADELA RIVERA, Plaintiff in the above styled and numbered cause, respectfully prays that an *ex parte* temporary restraining order be granted forbidding the sale of any property in question, that Defendants be cited and appear herein, that after notice and a hearing, that the temporary restraining order be converted into a temporary injunction, that after trial on the merits, title to the property be returned to the Estate, and for all other and further relief, either at law or in equity, to which Plaintiff shows herself justly entitled. Respectfully submitted,

LAW OFFICE OF SHIREE D. SALINAS, PLLC
4900 North 10th Street, Suite A-4
North Towne Centre
McAllen, Texas 78504
Telephone: (956) 631-9112
Facsimile: (956) 631-9114
E-Mail: ssalinas@ssalinaslaw.com

/s/ Shiree D. Salinas

SHIREE D. SALINAS
State Bar Number: 17537000

VERIFICATION

STATE OF TEXAS §
 §
COUNTY OF STARR §

BEFORE ME, the undersigned notary public, on this day personally appeared ADELA RIVERA, who, being by me duly sworn, on oath deposed and said that she is Applicant in this action; that she has read the above and foregoing document; and that every factual statement contained therein is within her personal knowledge and is true and correct.

ADELA RIVERA

SUBSCRIBED AND SWORN TO BEFORE ME by ADELA RIVERA this 28TH day of September 2017.

Notary Public, State of Texas

PR-17-037

EXHIBIT

1

CERTIFICATION OF VITAL RECORD

DEPARTMENT OF STATE HEALTH SERVICES VITAL STATISTICS UNIT

TEXAS DEPARTMENT OF STATE HEALTH SERVICES - VITAL STATISTICS
STATE OF TEXAS

CERTIFICATE OF DEATH

STATE FILE NUMBER 142-11-097582

1. LEGAL NAME OF DECEASED (Include MAID, AKA if not, Maiden, Last)		2. DATE OF DEATH (ACTUAL OR PRESUMED)	
RAFAEL PENA		08/01/2011	
3. SEX	4. DATE OF BIRTH	5. AGE (Last Birthday)	6. UNDERLYING CAUSE OF DEATH
MALE	09/04/1927	83	1. Immediate Cause
7. SOCIAL SECURITY NUMBER	8. MARITAL STATUS AT TIME OF DEATH		9. SURVIVING SPOUSE'S NAME (If wife, give name prior to last marriage)
456-34-9034	<input checked="" type="checkbox"/> Widowed <input type="checkbox"/> Divorced <input type="checkbox"/> Never Married <input type="checkbox"/> Unknown		RIO GRANDE CITY, TX
10. RESIDENCE STREET ADDRESS		10. APT. NO.	10. CITY OR TOWN
408 E. 4TH ST.			RIO GRANDE CITY
10A. COUNTY	10B. STATE	10C. ZIP CODE	10D. INSIDE CITY LIMITS
STARR	TEXAS	78582	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
11. FATHER'S NAME		12. MOTHER'S NAME PRIOR TO FIRST MARRIAGE	
NARCISO PENA		ADELA GRACIA	
13. PLACE OF DEATH (CHECK ONLY ONE)			
<input checked="" type="checkbox"/> If death occurred in a hospital: <input type="checkbox"/> Inpatient <input type="checkbox"/> Outpatient <input type="checkbox"/> POA <input type="checkbox"/> If death occurred somewhere other than a hospital: <input type="checkbox"/> Hospice Facility <input type="checkbox"/> Nursing Home <input type="checkbox"/> Decedent's Home <input type="checkbox"/> Other (Specify)			
14. COUNTY OF DEATH	15. CITY OR TOWN, ZIP OF OUTSIDE CITY LIMITS (GIVE PRECISE NO.)	16. FACILITY NAME (If not known, give street address)	
HIDALGO	MCALLEN, 78503	RIO GRANDE REGIONAL HOSPITAL	
17. INFORMANT'S NAME & RELATIONSHIP TO DECEASED		18. MAILING ADDRESS OF INFORMANT (Street and Number, City, State, Zip Code)	
ROXANA P. CANTU - DAUGHTER		3106 LAKESHORE DR., EDINBURG, TX 78539	
19. METHOD OF DISPOSITION		20. SIGNATURE AND LICENSE NUMBER OF FUNERAL DIRECTOR OR PERSON ACTING AS SUCH	
<input checked="" type="checkbox"/> Burial <input type="checkbox"/> Cremation <input type="checkbox"/> Donation <input type="checkbox"/> Entombment <input type="checkbox"/> Removal from state <input type="checkbox"/> Other (Specify)		SONATA A. SANCHEZ, BY ELECTRONIC SIGNATURE 113939	
22. PLACE OF DISPOSITION (Name of cemetery, crematory, other place)		23. LOCATION (City/Town, and State)	
RIO GRANDE CITY		RIO GRANDE CITY, TX	
24. NAME OF FUNERAL FACILITY		25. COMPLETE ADDRESS OF FUNERAL FACILITY (Street and Number, City, State, Zip Code)	
SANCHEZ FUNERAL HOME		P.O. BOX 11, RIO GRANDE CITY, TX 78582	
26. CERTIFIER (Check only one)			
<input checked="" type="checkbox"/> Certified physician (In the last of my knowledge, as with occurred due to the terminal and incurable disease) <input type="checkbox"/> Medical Examiner (In the last of my knowledge, as with occurred due to the terminal and incurable disease) <input type="checkbox"/> Medical Examiner (In the last of my knowledge, as with occurred due to the terminal and incurable disease)			
27. SIGNATURE OF CERTIFIER		28. DATE CERTIFIED (Month/Year)	29. LICENSE NUMBER
HUMBERTO NUNEZ, BY ELECTRONIC SIGNATURE		08/10/2011	N1022
30. PRINTED NAME, ADDRESS OF CERTIFIER (Street and Number, City, State, Zip Code)		31. TIME OF DEATH (Actual or presumed)	
HUMBERTO NUNEZ, PO BOX 3238, MISSION, TX 78573		00:58	
32. TITLE OF CERTIFIER		33. WAS AN AUTOPSY PERFORMED?	
MD		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
34. ENTER THE CHAIN OF EVENTS - DISEASES, INJURIES, OR COMPLICATIONS - THAT DIRECTLY CAUSED THE DEATH - DO NOT ENTER TERMINAL EVENTS SUCH AS CARDIAC ARREST, RESPIRATORY ARREST, OR VENTRICULAR FIBRILLATION WITHOUT SHOWING THE ETIOLOGY. DO NOT ABBREVIATE. ENTER ONLY ONE CAUSE ON EACH.		35. WERE AUTOPSY FINDINGS AVAILABLE TO COMPLETE THE CAUSE OF DEATH?	
IMMEDIATE CAUSE (Final disease or condition resulting in death)		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
a. CARDIOPULMONARY ARREST		Due to (or as a consequence of):	
b. HYPOTENSION		Due to (or as a consequence of):	
c. ASPIRATION PNEUMONIA		Due to (or as a consequence of):	
d. ADVANCE DEMENTIA		Due to (or as a consequence of):	
36. MANNER OF DEATH		37. DID TOXICO USE CONTRIBUTE TO DEATH?	
<input checked="" type="checkbox"/> Natural <input type="checkbox"/> Accident <input type="checkbox"/> Suicide <input type="checkbox"/> Homicide <input type="checkbox"/> Pending Investigation <input type="checkbox"/> Could not be determined		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Probably <input checked="" type="checkbox"/> Unknown	
38. IF FEMALE:		39. IF TRANSPORTATION INJURY, SPECIFY:	
<input type="checkbox"/> Not pregnant within past year <input type="checkbox"/> Pregnant at time of death <input type="checkbox"/> Not pregnant, but pregnant within 42 days of death <input type="checkbox"/> Not pregnant, but pregnant 43 days to one year before death <input type="checkbox"/> Unknown if pregnant within the past year		<input type="checkbox"/> Driver/Operator <input type="checkbox"/> Passenger <input type="checkbox"/> Pedestrian <input type="checkbox"/> Other (Specify)	
40A. DATE OF INJURY (Month/Year)	40B. TIME OF INJURY	40C. INJURY AT WORK?	40D. PLACE OF INJURY (e.g., Decedent's home, construction site, restaurant, wooded area)
		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
40E. LOCATION (Street and Number, City, State, Zip Code)		40F. COUNTY OF INJURY	
41. DESCRIBE HOW INJURY OCCURRED			
42A. REGISTRAR FILE NO.	42B. DATE RECEIVED BY LOCAL REGISTRAR	42C. REGISTRAR	
02 0915	08/11/2011	REGISTRAR - CITY OF MCALLEN, ELECTRONICALLY FILED	
EDR NUMBER 00000090214			

This is a true and correct reproduction of the original record as recorded in this office. Issued under authority of Section 191.051, Health and Safety Code.

ISSUED

AUG 12 2011

WARNING: THIS DOCUMENT HAS A DARK BLUE BORDER AND A COLORED BACKGROUND

GERALDINE R. HARRIS
STATE REGISTRAR



CAUSE NO. PR-17-037

ESTATE OF	§	IN THE COUNTY COURT
	§	
RAFAEL PENA DECEASED	§	COURT AT LAW
	§	
DECEASED	§	STARR COUNTY TEXAS

TEMPORARY RESTRAINING ORDER

Came on to be considered in court - chambers Adela Rivera's Verified Original Petition. The Court, having reviewed the petition, finds that it is in due and proper form. The Court further finds that Plaintiff possesses a probable right of recovery, and will suffer irreparable harm, if the scheduled sale of the property in question is not stopped because of loss of the property and inability to respond in damages. Accordingly, it is hereby

ORDERED that Guerra & Moore, Ltd., LLP, its agents, servants, employees, officers, all federal and state law enforcement officers, including but not limited to Hidalgo County Sheriff Department, McAllen Police Department and officer of the Department of Public Safety and any agent working for the United States Marshall's office and/or any in concert with them is hereby ENJOINED from selling, attempting to sell, foreclosing or otherwise interfering with the possession or title of 809 Sycamore in McAllen, Texas, more fully described as Lot Nine (9), Block Four (4), Highland Park Subdivision, an addition to the City of McAllen, Hidalgo County, Texas, as per plat map or plot thereof, recorded in Volume 10, Page 12, Map Records, Hidalgo County, Texas until further order of the Court.

It is further ORDERED that such temporary injunction shall be conditioned on the posting of a bond in the amount of \$_____.

It is further ORDERED that on the _____ day of October, 2017 at ____ o'clock ____m., this Court shall decide whether this temporary restraining order shall become a temporary

injunction.

Signed and Entered on this the _____ day of September, 2017.

JUDGE PRESIDING

EXHIBIT 2

AT 10:08 O'CLOCK 11 M

SEP 29 2017

CAUSE NO. PR-17-037

DENNIS D. GONZALEZ, COUNTY CLERK STARR CO. TX
BY: *[Signature]* DEPUTY

ESTATE OF

§

IN THE COUNTY COURT

RAFAEL PENA DECEASED

§

COURT AT LAW

DECEASED

§

STARR COUNTY TEXAS

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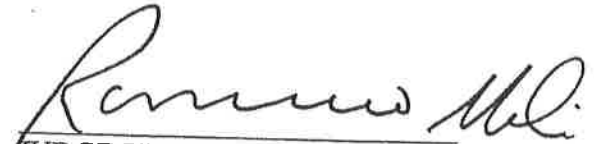
ORDERED that Guerra & Moore, Ltd., LLP, its agents, servants, employees, officers, all federal and state law enforcement officers, including but not limited to Hidalgo County Sheriff Department, McAllen Police Department and officer of the Department of Public Safety and any agent working for the United States Marshall's office and/or any in concert with them is hereby ENJOINED from selling, attempting to sell, foreclosing or otherwise interfering with the possession or title of 809 Sycamore in McAllen, Texas, more fully described as Lot Nine (9), Block Four (4), Highland Park Subdivision, an addition to the City of McAllen, Hidalgo County, Texas, as per plat map or plot thereof, recorded in Volume 10, Page 12, Map Records, Hidalgo County, Texas until further order of the Court.

It is further ORDERED that such temporary injunction shall be conditioned on the posting of a bond in the amount of \$ 5,000 *12th* *Oct*

It is further ORDERED that on the 22 day of October, 2017 at 9:00 o'clock A.m., this Court shall decide whether this temporary restraining order shall become a temporary

injunction.

Signed and Entered on this the 29 day of September, 2017.


JUDGE PRESIDING



I CERTIFY THAT THIS IS A TRUE AND
CORRECT COPY OF THE ORIGINAL
FILED IN MY OFFICE 9-29-17

Dennis Gonzalez, County Clerk
Starr County, Texas

BY: 

DEPUTY CLERK

DATE: 9-29-17

EXHIBIT 3

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Letters of Temporary Administration

No: PR: 17-037

The State of Texas,

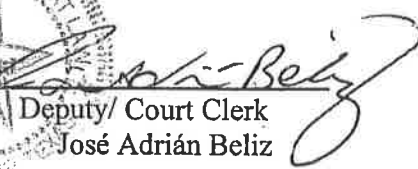
County of Starr

In County Court at Law

Starr County, Texas

I, Dennis D. Gonzalez, Clerk of the County Court of Starr County, Texas, do
Hereby certify that on the 29TH Day of September, 2017 A.D. Adela Rivera
was appointed by said court duly Granted to be appointed Temporary
Administrator of the Estate of Ricardo Peña and that He/she is duly
Qualified as Temporary Administrator of said Estate on the 29th of
September, 2017 A.D as the law requires, and that said appointment is still in
full force and effect. Witness my hand and seal of said court, at Rio Grande
City, Texas this 29th day of September, 2017 A.D.

Dennis D. Gonzalez,
Clerk of County Court at Law,
Starr County, Texas

By: 
Deputy/ Court Clerk
José Adrián Beliz

=====

SEP 29 2017

CAUSE NO. **PR-17-037**DENNIS D. GONZALEZ, COUNTY CLERK STARR CO. TX
BY: *[Signature]* DEPUTYESTATE OF
RAFAEL PENA DECEASED

§ IN THE COUNTY COURT

§

§

AT LAW #1

§

DECEASED

§

STARR COUNTY TEXAS

**ORDER GRANTING LETTERS OF TEMPORAY
ADMINISTRATION**

On 29 day of Sept, 2017 the Court heard the Application to Appoint Temporary Administrator of Estate filed by ADELA RIVERA ("Applicant") in the Estate of RAFAEL PENA, DECEASED (Decedent). Applicant appeared through by and through counsel of record, Shiree D. Salinas.

After reviewing the pleadings and hearing the arguments of counsel, the Court finds that it is in the best interest of the Estate to appoint Applicant ADELA RIVERA as Temporary Administrator of this Estate pursuant to §452.051 of the Texas Estates Code.

It is **ORDERED** that Applicant is hereby appointed as Temporary Administrator of this Estate and that said Temporary Administrator shall have the following powers;

- (i) The power to collect any and all Estate assets to be administer under this Court's supervision;
- (ii) The power to file suit on behalf of the Estate in order to protect the Estate's interest in any assets;
- (iii) The power to file tax returns and conduct other necessary business on behalf of the Estate and the Decedent; and
- (iv) The power to prepare and file an Inventory, Appraisement and List of Claims

in this Court.

It is **ORDERED** that the appointment of Applicant as Temporary Administrator shall continue in full force and effect until it is converted into a Permanent Administration within six months of the signing of this Order.

It is **ORDERED** that a Temporary Administrator shall file with this Court a corporate surety bond in the amount \$ 5,000.⁰⁰

It is **FURTHER ORDERED** that, upon the filing of the required corporate surety bond and upon the taking and filing of the Oath required by law, Letters of Temporary Administration shall issue to Applicant who is Appointed As Temporary Administrator of this Estate.

SIGNED on this 29 day of Sept, 2017.

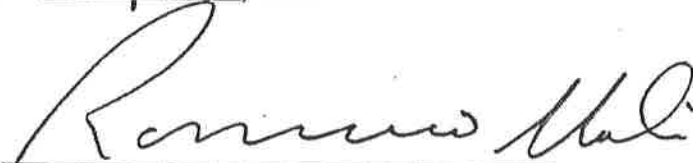

JUDGE PRESIDING

EXHIBIT 4

Dennis D. Gonzalez
County Clerk
Starr County, Texas
Lilly Guerrero

PR-17-037

AFFIDAVIT OF ADELA RIVERA

THE STATE OF TEXAS §

COUNTY OF STARR §

BEFORE ME, the undersigned authority, personally appeared ADELA RIVERA, who being by me duly sworn, on oath deposed and said:

"My name is ADELA RIVERA and my address is 408 East 4th Street, Rio Grande City, Starr County, Texas, 78582. I am over the age of eighteen (18) years and am competent to make this affidavit. All statements contained in this affidavit are within my personal knowledge and are true and correct.

"There is an immediate need to appoint a temporary administrator in this Estate because I have recently learned that my father RAFAEL PENA deeded a property located at 809 Sycamore Avenue, McAllen, Texas to ROXANNE CANTU and MARK CANTU. I assert that my father the Decedent RAFAEL PENA lacked the mental capacity to do so because he suffered of Dementia (see Exhibit #1 -Death Certificate of Rafael Pena). I further assert that I have an interest in said property because RAFAEL PENA lacked the mental capacity to deed the property located at 809 Sycamore Avenue, McAllen, Texas at the time that he did so; and therefore said property should be given back to his estate so that it can be distributed to his heirs including me by Intestacy law of the State of Texas. Since I am a natural born daughter of RAFAEL PENA, I now make this Application pursuant to the applicable code to allow this Court to order said property located at 809 Sycamore Avenue, McAllen, Texas be returned, received and/or recovered by the Estate of RAFAEL PENA. And that said property be distributed to the natural heirs of RAFAEL PENA, including me,

according to the Intestacy laws of the State of Texas. I have also learned that said property located at 809 Sycamore Avenue, McAllen, Texas is to be foreclosed upon on Tuesday, October 3rd, 2017, and therefore the Appointment of a Temporary Administrator is required immediately, so that the Administrator can take the necessary steps to stop this foreclosure on or before said date.

" I respectfully request that the Temporary Administrator be given the power and authority to collect and all Estate assets to be administered under this Court's supervision, to file suit on behalf of the Estate in order to protect the Estate's interest in any assets, to file tax returns and conduct other necessary business on behalf of the Estate and the Decedent, and to prepare and file an Inventory, Appraisement and List of Claims.

" I am not disqualified by law from serving as Temporary Administrator.

" It is my understanding that the Decedent owned a house, several bank accounts, multiple motor vehicles and some investment assets which were approximately \$20,000 on the date of death.


ADELA RIVERA

23rd SUBSCRIBED AND SWORN TO BEFORE ME by ADELA RIVERA on this the
day of Sept, 2017, to certify which witness my hand and official seal.


Notary Public in and for the State of Texas
My Commission Expires: 2-25-21

